

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 05-10218-RCL
)
JESSE WILSON)
)
)

GOVERNMENT'S MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION TO SUPPRESS

The government hereby files this memorandum in opposition to defendant Jesse Wilson's Motion to Suppress. Wilson is charged in a one-count superseding indictment with being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §922(g)(1). He has moved to suppress the firearm and ammunition, claiming that the police officers who arrested him had no legitimate reason to stop the automobile in which he was a passenger.

For the reasons set forth below, this Motion should be denied.

FACTUAL BACKGROUND

On July 21, 2005, Brockton police officers were in an unmarked police car on patrol monitoring the activity at the intersection of Warren Ave. and Highland Street in Brockton, an area known for street level drug dealing, violent crimes and

prostitution.¹ While stopped at the signal light at the intersection of Legion Parkway and Warren Ave., the officers saw a green car pull out of a gas station parking lot at a high rate of speed. The driver was going so fast and carelessly that he drove into the opposite lane of traffic, causing a vehicle traveling towards him to veer to the side of the road to avoid a collision. The green car continued down Highland and the police officers activated their emergency lights. The green car slowed down, but continued driving. As the police car got closer, the green car pulled to the side of the road and stopped. The police officers approached the green car and observed the defendant Jesse Wilson in the back seat with his hands on his lap and a black T-shirt draped over his lap. Wilson kept moving in his seat and the officers asked him to get out of the car. As he did so, one of the police officers observed a gun in the back seat where Wilson had been sitting. The officer yelled "gun." The driver and front seat passenger both got out of the car and fled on foot. The driver, Andrew Nelson ("Nelson"), was apprehended by other Brockton police officers and charged with, among other

¹ The information concerning the traffic stop, arrest and seizure of the gun and ammunition are based upon the narrative contained in the Brockton Police Department Arrest Report, which was prepared contemporaneously by one of the arresting officers, Erik Hilliard, on July 21, 2005, and signed by him under the pains and penalties of perjury. A copy of the report is attached as Exhibit A.

things, operating to endanger.² Wilson also attempted to flee, but was stopped and arrested after a struggle. The officers seized the gun and ammunition and Wilson was eventually indicted for being a felon in possession of those items.

On October 27, 2005, Nelson appeared in the Brockton District Court and admitted to sufficient facts on a charge of Negligent Operation of a Motor Vehicle, as well as to Disturbing the Peace and Failing to Stop for a Police Officer, all in connection with the traffic stop on July 21, 2005. See Record of Criminal Case No. 0515CR004767 from the Brockton District Court, attached as Exhibit B. As a result, Nelson was adjudged "guilty" of the Negligent Operation of a Motor Vehicle charge and sentenced to probation.³

During the October 27, 2005 plea hearing, Nelson was sworn and the judge conducted a detailed colloquy to make sure Nelson understood the significance of admitting to sufficient facts and the various rights Nelson would thereby be giving up.⁴ The Court advised Nelson that "when you admit to sufficient facts for a

² The front seat passenger, an unknown female, was not caught or identified.

³ The other two counts were continued without a finding.

⁴ Attached as Exhibit C is a copy of the audiocassette recording of the October 27, 2005 hearing. The information contained in this paragraph is derived from that recording, which has not been transcribed. The tape was received by the government on May 31, 2006, and a copy was mailed to Nelson's attorney on June 1, 2006.

finding of guilty that's similar to a guilty plea. It allows a guilty finding to enter either now or some future time without a trial. It allows you to be sentenced as provided by law and you give up some important rights when you do that." The court then detailed the rights Nelson would be giving up, including the right to a jury trial, to have the government prove the charges against him beyond a reasonable doubt, to be represented by counsel at trial and to not testify at trial. The court inquired of Nelson's education and also determined that Nelson had not ingested anything which might impair his ability to understand what he was doing. The court advised Nelson that his admission would permit the court to accept the facts as stated by the government as true, and Nelson responded that he understood. The prosecutor thereafter informed the court of what had occurred on the evening of July 21, 2005.⁵ Among other things, he stated that the Brockton police officers "noticed a motor vehicle pull out of a gas station at a high rate of speed" and that it "pulled out wide, so it was in the other lane of travel, causing some traffic to divert itself to avoid being struck by this motor

⁵ During the hearing, Nelson also admitted to sufficient facts in connection with two other unrelated complaints, involving allegations of assault and battery and threatening harm. A fourth complaint, alleging possession of a Class D substance with intent to distribute, was not resolved at that hearing. Nelson pleaded guilty to the drug charge on January 17, 2006 and was sentenced to 90 days in jail. See Record of Criminal Case No. 0515CR006276, attached as Exhibit D.

vehicle." After the prosecutor finished stating the offense conduct for the several charges, the court asked Nelson whether he understood that his admission "lets me accept those facts as true?" Nelson responded "yes." The court then found Nelson guilty on the charge of negligent operation of a motor vehicle and continued without a finding the other two charges from July 21, 2005. At no time during the hearing did Nelson disagree with the prosecutor's statement of the offense conduct.

WILSON'S MOTION TO SUPPRESS

On March 15, 2006, Wilson filed a motion to suppress the gun and ammunition, asserting that they were seized in violation of the Fourth Amendment to the U.S. Constitution. In support of the motion, Wilson relies exclusively on Nelson's affidavit which asserts, contrary to the police report and his own admissions in Brockton District Court, that Nelson had been driving at a lawful rate of speed prior to the police stop and at no time committed a driving violation. According to Nelson, he "crossed over from Legion Parkway to Highland Street with the green light at a lawful rate of speed. About 3 or 4 houses down Highland Street, I stopped to say hello to an acquaintance (sic) standing in front of a rooming house. At this time, an unmarked cruiser came up behind and flashed its lights and siren. I pulled over to the side of the road about 3 or 4 houses away so as to not block the street." Nelson aff. Nelson further claimed that he had

"admitted to sufficient facts to driving to endanger" only because he "had other cases pending and just wanted it to go away." Id.

LAW AND ARGUMENT

Based on Nelson's version of events, Wilson argues that the police officers did not have a reasonable suspicion that a crime or traffic violation had occurred and thus the vehicle stop was a violation of the Fourth Amendment. Wilson seeks suppression of the fruits of the stop, that being the gun and ammunition.

The government opposes this motion because the Brockton police report and Nelson's own admission under oath to the negligent operation of a motor vehicle charge together establish that the police officers had a reasonable suspicion that a traffic violation had occurred which justified the vehicle stop. In the alternative, however, even if the Court were to credit Nelson's new version of events as described in his affidavit, that statement reflects that Nelson was potentially in violation of Brockton traffic ordinances and thus the police were similarly justified in stopping his car to investigate further.

A police officer is justified in stopping a vehicle to investigate as long as the stop "was supported by a reasonable and articulable suspicion that the vehicle was traveling in violation of a traffic law." United States v. Fox, 393 F.3d 52, 59 (1st Cir. 2005), citing Whren v. United States, 517 U.S. 806,

810 (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.") and United States v. Chhien, 266 F.3d 1, 6 (1st Cir. 2001) (A traffic stop "must be supported by a reasonable and articulable suspicion of criminal activity.").

Here, the police officers observed the car leaving the gas station at an excessive rate of speed, swerving into the oncoming lane of traffic, and causing another car to pull to the side to avoid a collision. For those actions, Nelson was charged with negligent operation of a motor vehicle. Nelson later admitted, under oath, to the same version of events as contained in the police report and he was adjudged guilty.⁶ Since the evidence establishes that Nelson was driving his car negligently, the police officers were justified in stopping the car.

Assuming, arguendo, that the Court were to reject this version of the events of July 21, but instead credit Nelson's new version as set forth in his affidavit, Wilson's motion should still be denied.

According to Nelson's affidavit, he stopped his car to say hello to an acquaintance, and when the police flashed their

⁶ Nelson's admissions in the Brockton District Court may be treated by this Court as admissions, although they may not be given collateral estoppel effect. United States v. One Parcel of Real Property, 900 F.2d 470 473 (1st Cir. 1990); Aetna Casualty & Surety Company v. Niziolek, 395 Mass. 737, 750 (1985).

lights at him, he had to pull over to the side of the road "so as to not block the street." Brockton Ordinance §12-46 states that "No person shall drive in such a manner as to obstruct unnecessarily the normal movement of traffic upon any street or highway."⁷ Brockton Ordinance §12-71 provides that "No person shall stand or park . . . in any of the following places: . . . (f) Upon any roadway where the parking of a vehicle will not leave a clear and unobstructed lane at least ten (10) feet wide for passing traffic." Nelson's version of events establishes that he was potentially in violation of Brockton Ordinances §12-46 and/or §12-71. Therefore, the police had cause to pull him over and investigate further.

That Nelson was potentially in violation of a different statute or ordinance than the ones for which he was cited, that is sufficient to uphold the stop against a Fourth Amendment challenge. Goodwin v. Johnson, 132 F.3d 162, 173 (5th Cir. 1998) ("So long as a traffic law infraction that would have objectively justified the stop had taken place, the fact that the police officer may have made the stop for a reason other than the occurrence of the traffic infraction is irrelevant for purposes of the Fourth Amendment . . ."); United States v. Lopez-Moreno, 420 F.3d 420, 431-32 (5th Cir. 2005) (holding that even if

⁷ A copy of the relevant Brockton Ordinances are attached as Exhibit E.

officer's subjective motivation for initiating the vehicle stop was his mistaken view that the defendant was violating a specific statute, "the fact that it was objectively reasonable to suspect that [the defendant] was violating [a different statute] means that the initial stop passes constitutional muster."); see also, United States v. Jones, 432 F.3d 34, 40-41 (1st Cir. 2005) ("[T]he probable cause inquiry [for an arrest] is not necessarily based upon the offense actually invoked by the arresting officer but upon whether the facts known at the time of the arrest objectively provided probable cause to arrest. . . . If, on the facts known to the arresting officers, there was probable cause to believe he was committing another crime, the arrest was valid."). The Jones holding relied on Devenpeck v. Alford, 543 U.S. 146 (2004). In that §1983 action, the Supreme Court reversed a Ninth Circuit decision which had held that an arresting officers could not have had probable cause to arrest because the crime cited at the time of arrest was not in fact a crime in the state of Washington, and the crimes actually charged were not "closely related" to the offense stated. Devenpeck, 543 U.S. at 152. The Supreme Court stated that "an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause. . . ." and "his subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." Id.

at 153. The Court stated further that, "[a]s we have repeatedly explained, the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." Id.

Here, if Nelson's new version of events is credited, then those "facts" would objectively have provided the police with sufficient reason to stop Nelson's vehicle to investigate further the potential violations of Brockton Ordinances prohibiting unreasonable obstruction of traffic and parking in a roadway without leaving a clear and unobstructed lane.

Wilson's Motion Should Be Denied Without A Hearing

A criminal defendant is not entitled, as a matter of right, to an evidentiary hearing on every motion that he chooses to file. United States v. Staula, 80 F.3d 596, 603 (1st Cir. 1996). "A hearing is required only if the movant makes a sufficient threshold showing that material facts are in doubt or dispute, and that such facts cannot reliably be resolved on a paper record." Id. at 603. In particular, evidentiary hearings on motions to suppress are required only when a defendant makes a sufficient showing that an illegal search has occurred. United States v. Lewis, 40 F.3d 1325 (1st cir. 1994). "To make this showing the defendant must allege facts, sufficiently definite,

detailed, and nonconjectural to enable the court to conclude that a substantial claim is presented." Id.

First, Nelson's self-serving affidavit which contradicts his own previous sworn admissions should be deemed by the Court to be insufficient to show that material facts are in doubt. Second, Nelson's affidavit describes an alternative version of events which would have provided the police with a reasonable suspicion to believe that traffic ordinances were being violated and thus cause to stop the vehicle. In either event, Wilson has failed to make a sufficient showing that an illegal search occurred which would merit an evidentiary hearing.⁸

CONCLUSION

The police had probable cause to believe that the driver of the car in which Wilson was a passenger had committed traffic violations justifying a stop of that vehicle. There was no constitutional violation and Wilson's motion to suppress should

⁸ If the Court grants Wilson an evidentiary hearing, the government requests that Nelson be required to testify and be subject to cross-examination before the government presents its evidence.

be denied without a hearing.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Mark J. Balthazard
MARK J. BALTHAZARD
Assistant U.S. Attorney

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on June 14, 2006.

/s/ Mark J. Balthazard
MARK J. BALTHAZARD
Assistant U.S. Attorney

OBTN

TBRO000042850

BROCKTON POLICE DEPARTMENT**Arrest Booking Report**

Case No.

05008848

ARRESTEE

Arrestee Name (Last, First, Middle Initial)

WILSON, JESSIE

Arrest No.

00051478

Social Security No.

- -

Caution

Address

475/MASSACHUSETTS AVE, BOSTON, MA

Scars, tattoos, etc.

SCAR ON CHEST RT SDE

Sex

M

Race

B

Height

509

Weight

180

Hair

BLK

Eyes

BRO

Build

MED

Complexion

MEDIUM

Marital Status

SINGLE

D.O.B.

04/20/1980

Age

25

Place of Birth

BOSTON, MASS

Father's Name

JESSIE WILSON

Mother's Maiden Name

WALKER

Wife's Maiden Name

Husband's First Name

Weekly Wage

Occupation

UNEMPLOYED

Employer

Alias/Nickname 1

Alias/Nickname 2

Alias/Nickname 3

CHARGE

Charge(s)

- 1) UNL CARRY FIREARM
- 2) UNL POSS AMMUNITIO
- 3) RESISTING ARREST
- 4) FALSE NAME/SS# PO

MGL Chapter/Section

269-10A

269-1007

268-32B

268-34A

Warrant Number

HANDGUN

JOHNNY WALLE

W & S

PSN

Arrest Date	Time	Arrest Location	Arresting Officer 1	Arresting Officer 2	Domestic Violence?
07/21/2005	17:20	HIGHLAND & GLENWOOD	SMITH JAMES	HILLIARD ERIK	NO

CONTROL

Booking Date	Time	Booking Officer	Cell No.	Matron	Police Department on Warrant
07/21/2005	18:54	O'MALLEY, PATRICK	3		

Rights given by	Visible Injuries?	Comments
LINEHAN RICHARD	NO	
Searched by	No. Codefendants	Codefendant(s) Name(s)
SMITH JAMES	1	NELSON, ANDREW

JUVENILE

Person to notify	Relationship	Address	Telephone No.	Date/time notified
Probation Officer	Release or Hold	Notified by	Juvenile released to (Signature)	

RELEASE

I was informed of my right to remain silent, to use a telephone, at my own expense, for the purpose of communicating with family or friends, to arrange bail or to call an attorney.

Arrestee Signature

Telephone used? (yes or no)	Bail Amount	Date/time Released	Released by
<input checked="" type="radio"/> YES			

Offense/Incident		BROCKTON POLICE DEPARTMENT		Case No.	
UNL CARRY FIREARM		ARREST REPORT		05008848	
Offense Date and Time	Day	Arrest Date and Time	Day	Domestic Violence?	
07/21/2005 18:00	Thr	07/21/2005 17:15	Thr	NO	
Location of Offense	Apt	Sector	Wrd	Prec	Arresting Officer
HIGHLAND & GLENWOOD ST		CC	2	2B	HILLIARD ERIK
Defendant's Name	Sex	Race	Hgt	Wgt	D.O.B.
NELSON ANDREW	K	M	506	170	05/18/1985
					A/J
					ADULT
Defendant's Address				Social Security No.	
31 LINDSEY ST #1 DORCHESTER MA				011689303	
Offense(s) Charged	A	B		C	
UNL CARRY FIREARM	UNL POSS AMMUNITIO	RESISTING ARREST			
	D	E		F	
FALSE NAME/SS# PO	FL STOP SIG OF PO	OP MV TO ENDANGER			
Weapon(s) Used		Location of Arrest			
		HIGHLAND ST AND GLENWOOD ST			
Co-Defendant	Address			D.O.B.	
WILSON JESSIE	475/MASSACHUSETTS AVE BOSTON M			04/20/1980	
Victim 1	Sex	Race	D.O.B		
SMITH JAMES	M	W			
Residence Address			Res Telephone	Bus Telephone	
BPD				941-0234	
Victim 2	Sex	Race	D.O.B		
HILLIARD ERIK	M	B			
Residence Address			Res Telephone	Bus Telephone	
BPD				941-0234	
Type of Property	Make	Model	Color 1	Color 2	Value
FIREARMS/ACCESSORI	H&R	HR922	SIL	SIL	\$
Type of Property	Make	Model	Color 1	Color 2	Value
FIREARMS/ACCESSORI					\$
Witness 1	Sex	Race	D.O.B		
O'BRIEN KRISTEN	F	W			
Residence Address			Res Telephone	Bus Telephone	
BPD				941-0200	
Witness 2	Sex	Race	D.O.B		
VAZQUEZ CARMEN	F	U			
Residence Address			Res Telephone	Bus Telephone	
BPD				941-0200	

Offense/Incident		Case No.	
UNL CARRY FIREARM		05008848	
BROCKTON POLICE DEPARTMENT ARREST REPORT			
Witness 3	Sex	Race	D.O.B
SMITH ROBERT	M	W	
Residence Address	Res Telephone	Bus Telephone	
BPD		941-0200	
Witness 4	Sex	Race	D.O.B
SNIGER JAMES	M	W	
Residence Address	Res Telephone	Bus Telephone	
BPD		941-0200	
Witness 5	Sex	Race	D.O.B
MATUKAS DANIEL	M	W	
Residence Address	Res Telephone	Bus Telephone	
BPD		941-0200	
State & Reg.	Year	Make	Model
MA 49DM53	98	PONT	GRA
		GRN	
Vehicle ID Number			
Status			
Narrative:			
<p>1. While assigned to the 4-12 Detective Division Det. Smith and myself</p> <p>2. were on patrol in the area of Legion Parkway in an unmarked Police</p> <p>3. vehicle monitoring the activity at the gas station at the intersection</p> <p>4. of Warren Av. and Highland St. This particular area is known for its</p> <p>5. street level drug dealings, prostitution and violent crimes. As we</p> <p>6. were stopped at the signal light (W) at the intersection of Legion PY</p> <p>7. and Warren Av. we observed a green motor vehilce pull out of the gas</p> <p>8. station parking lot, located at Warren Av and Highland at a high rate</p> <p>9. of speed. The vehicle fled from the lot taking a right onto Highland</p> <p>10. St with a sense of urgency. The car pulled out of the lot so quickly</p> <p>11. and carelessly he drove into the opposite lane of traffic causing a</p> <p>12. vehicle which was travelling west to pull to the side of the road to</p> <p>13. avoid an impact. The vehicle continued west, passed a vehilce on the</p> <p>14. left which was operating in a normal manner. At this time Det. Smith</p> <p>15. activated the cruisers emergency lights and the vehicle pulled in</p> <p>16. front of #47 Highland St. The vehicle continued west on Highland St.</p> <p>17. at a very slow pace, even though he noticed our lights. As we got</p> <p>18. close to the vehicle it pulled onto the side walk at the intersection</p> <p>19. of Highland St. and Glenwood St. I approached the passengers side and</p> <p>20. observed the right rear passenger (later Id'd as Wilson) with his</p> <p>21. hands on his lap with a black T-shirt drapped over his lap. As I got</p> <p>22. closer to the passengers rear door, I observed the Wilson moving and</p> <p>23. lean towards the driver. At this same time I observed the passenger</p> <p>24. in the front (unknown female) make motions towards the glove box. I</p> <p>25. yelled to the rear passenger to stop moving and put his hands where I</p> <p>26. could see them. At time I asked the rear passenger what did he move</p> <p>27. from his lap. The rear passenger stated he was just moving his T-shirt</p> <p>28. (color black) I ordered the man to stop moving and I ordered the</p>			

Offense/Incident

Case No.

UNL CARRY FIREARM

BROCKTON POLICE DEPARTMENT
ARREST REPORT

05008848

29 driver (later Id'd as Nelson) to shut off the vehicle. At this time
 30 Det. Smith approached the driver and asked for his license and
 31 registration. It should be noted that as I approached Det. Smith, who
 32 was a few moments behind me as I approached the vehicle stated both
 33 the rear passenger and the driver were fixated on me and my location
 34 and my approach. In fact when Det. Smith asked Nelson for his license
 35 he startled Nelson. At this time I asked the suspect for his name. He
 36 stated "Justin" The rear passenger kept moving in his seat and I asked
 37 him to step from the vehicle. As I opened the door the rear passenger
 38 "Wilson" step out with both feet, which I immediately felt as if he
 39 were going to run. I grabbed his right arm to try to get in and
 40 control him. As I escorted Wilson from the vehicle I observed him to
 41 not have on the black T-shirt and he was sweating. I looked in his
 42 face and it was panicked. At this time Det. Smith yelled "Gun!!!!" and
 43 Wilson immediately pushed off on me and tried to even push me into
 44 the bushes that were at the corner where we had the vehicle stopped.
 45 Wilson fought violently twisting, turning failing his free arm, even
 46 using his body weight to push me off balance. At this time Det. Smith
 47 ran to my aid and grabbed a hold of the now very slippery Wilson. As
 48 we continued to subdue Wilson, Det. Smith grabbed hold of Wilson's
 49 upperbody, my left arm was trapped between Smith's arm and Wilson's
 50 torso. At this moment I felt a violent tug on my right side where my
 51 firearm was located. Wilson grabbed my nylon mini-flashlight pouch and
 52 jerked it. It should be noted that my holstered firearm was located
 53 directly in front my flashlight pouch approximately 2 inches apart. I
 54 knew that Wilson was attempting to grab my firearm, but grabbed the
 55 wrong item. While my left arm was still pinned I grabbed my mini
 56 flashlight, which was hanging from its pouch, removed it and in
 57 an attempt to remove Wilson's grip from my issued equipment, I struck
 58 him on the side of his head and immediately again on the other side of
 59 his head, causing him to remove his grip from my firearm holster and
 60 flashlight pouch. The entire time I gave commands to Wilson to let go
 61 and to get to the ground. After being struck the second time Wilson
 62 was guided from the bushes where we were fighting with the defendant
 63 supported and forced to the pavement with an arm bar take down by Det.
 64 Smith where he was placed into a rear wrist lock and handcuffed using
 65 a non compliant handcuffing technique. It should also be noted that
 66 as soon as Det. Smith yelled "Gun" the driver and the front passenger
 67 got out of the vehicle and fled the area on foot running north on
 68 Glenwood St. As back up units arrived Ofc. Robert Smith asked were we
 69 OK I stated yes, and gave a description of the driver and female.
 70 Prior to Ofc. R Smith giving out the other suspect information, Ofc.
 71 O'Brien asked were we looking for another party who fled on foot. Ofc.
 72 O'Brien and the responding cruisers were given the description of a
 73 black male with a black shirt. Ofc. O'Brien repoded by saying she had
 74 the other suspect running towards Moreland St. The other suspect Id'd
 75 as Andrew Nelson ran through the yard of 49 Newbury St, through the
 76 yard of 20 Moreland St, across the street to 15 Moreland St through
 77 another backyard and was placed under arrest in the area of 20
 78 Lexington St. The party the cruiser team had detained was the same
 79 party who fled from the vehicle we had stopped (Ma 49DM53 a green

104 : UNLAWFUL POSSESSION OF AMMUNITION, RESISTING ARREST and false name to
105 : a Police Officer.
106 : Nelson charged with the following: Failure to stop signal Police
107 : Officer, Operating to endanger, and Disturbance.
108 : Citaion issued to operator Mr.Nelson M0508532 and m/v towed]

Signed under the pains & penalties of perjury. (Arresting Officer Signature)

SK RLD #291

Report Date : Supervisors Signature

7/21/05

*St. G. P. R. #245
072105*

Case 1:05-cr-10218-RCL
RECORD OF CRIMINAL CASE

Docket No. 20-3 Filed 06/14/2006 Page 1 of 2
0515 CR 004767

**Trial Court of Massachusetts
 District Court Department**



DEFENDANT NAME ANDREW K NELSON			COURT NAME & ADDRESS BROCKTON DISTRICT COURT 215 MAIN ST P.O. BOX 7610 BROCKTON MA 02303-7610 (508) 587-8000		
DEFENDANT ALIAS(ES)					
DEFENDANT ADDRESS 221 PINE GROVE DRIVE		CITY/TOWN BROCKTON	STATE MA	ZIP CODE 02301	
SEX M	DATE OF BIRTH [REDACTED]	CITY OF BIRTH DORCHESTER	STATE OF BIRTH MA	SOCIAL SECURITY NO. [REDACTED]	
MOTHER'S MAIDEN NAME PARKINSON, MARI			FATHER'S NAME NELSON, MICHAEL		
PCF NO. 2524459	SID NO.	DRIVERS LICENSE NO.		LICENSE STATE	

CASE INFORMATION

NO. COUNTS 3	POLICE DEPT BRO	POLICE INCIDENT NO. 05008848	OFFENSE LOCATION BROCKTON	ARREST DATE 7/21/05	MV CITATION NO. M0508532
CURRENT DEFENSE ATTORNEY MARK S. MACHADO			ATTORNEY TYPE APPOINTED - INDIGENT		
CURRENT PROSECUTOR			COMPLAINANT CESARINI, SGT. ANDREW H.		

OFFENSE AND JUDGMENT INFORMATION

COUNT: 1 OFFENSE DATE: JULY 21, 2005
 90/24/E NEGLIGENT OPERATION OF MOTOR VEHICLE

JUDGMENT DATE: 10/27/05 JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN
 JUDGMENT METHOD: ADM SUFF FACTS JUDGMENT: GUILTY
 PROBATION START DATE: 10/27/05 PROBATION END DATE: 1/26/06
 SPECIAL CONDITIONS:
 SU SUPERVISED PROBATION ORDERED
 PM PAY MONIES ON ATTACHED "NOTICE TO DEFENDANT" TIMELY
 SP PAY ANY CHILD SUPPORT ORDER, AS DEFINED IN GL 119A §1A
 VR ALLOW PROBATION TO VISIT RESIDENCE WHEN HE/SHE REQUIRES
 AM COMPLETE ANGER MANAGEMENT PROGRAM:
 APPLIES TO COUNTS 2 AND 3

COUNT: 2 OFFENSE DATE: JULY 21, 2005
 272/53/G DISTURBING THE PEACE

JUDGMENT DATE: 10/27/05 JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN
 JUDGMENT METHOD: ADM SUFF FACTS JUDGMENT: CONT W/O FINDING; SUFF FACTS
 PROBATION START DATE: 10/27/05 PROBATION END DATE: 1/26/06

COUNT: 3 OFFENSE DATE: JULY 21, 2005
 90/25/D POLICE OFFICER, FAIL STOP FOR

JUDGMENT DATE: 10/27/05 JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN
 JUDGMENT METHOD: ADM SUFF FACTS JUDGMENT: CONT W/O FINDING; SUFF FACTS
 PROBATION START DATE: 10/27/05 PROBATION END DATE: 1/26/06

BAIL/BOND INFORMATION

BAIL TYPE	BOND AMT SET	CASH AMT SET	DATE SET	JUDGE
CASH ONLY		\$500.00	7/22/05	JOHN M. STELLATO

PAGE 1	DATE RECORD PRINTED 3/28/06	A TRUE COPY ATTEST	CLERK/MAGISTRATE <i>Ken P. Lueder</i>
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Exhibit C is an audio cassette tape, certified by the Commonwealth of Massachusetts District Court, of an October 27, 2005 plea hearing of Andrew Nelson. The cassette, marked as Exhibit C, will be filed separately with the Court (see attached letter), and a copy has been sent to the attorney for the defendant. The cassette has the following information on the label:

Andrew Nelson
Brockton 4767 10-27-05
Tape 402-88-975

Serial No. 213568



Í

U.S. Department of Justice

Michael J. Sullivan
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

June 14, 2006

BY HAND

Lisa Hourihan
Deputy Clerk
United States District Court
District of Massachusetts
John Joseph Moakley U.S. Courthouse
1 Courthouse Way - Suite 2300
Boston, MA 02210

Re: United States v. Jesse Wilson
Cr. No. 05-10218-RCL

Dear Ms. Hourihan:

Enclosed is an audio cassette tape marked Exhibit C for filing in the above-referenced case. I have today filed by ECF Government's Memorandum in Opposition to Defendant's Motion to Suppress, to which the tape is an exhibit. I have filed by ECF a notice with the Memorandum referencing the tape and the fact that it is being filed separately with the Clerk's Office.

If you have any questions about this, please call me at 617-748-3208.

Very truly yours,

MICHAEL J. SULLIVAN
United States Attorney

By:

MARK J. BALTHAZARD
Assistant U.S. Attorney

Enc.

cc: Paul Garrity, Esq.
14 Londonderry Rd.
Londonderry, NH 03053

Case 1:05-cr-10218-RCL
RECORD OF CRIMINAL CASE

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0515 CR 006276

**Trial Court of Massachusetts
 District Court Department**



DEFENDANT NAME ANDREW K NELSON			COURT NAME & ADDRESS BROCKTON DISTRICT COURT 215 MAIN ST P.O. BOX 7610 BROCKTON MA 02303-7610 (508) 587-8000		
DEFENDANT ALIAS(ES)					
DEFENDANT ADDRESS 221 PINE GROVE DRIVE		CITY/TOWN BROCKTON	STATE MA	ZIP CODE 02301	
SEX M	DATE OF BIRTH [REDACTED]	CITY OF BIRTH DORCHESTER	STATE OF BIRTH MA	SOCIAL SECURITY NO. [REDACTED]	
MOTHER'S MAIDEN NAME PARKINSON, MARI			FATHER'S NAME NELSON, MICHAEL		
PCF NO. 2524459	SID NO.	DRIVERS LICENSE NO.		LICENSE STATE	

CASE INFORMATION

NO. COUNTS 1	POLICE DEPT SP	POLICE INCIDENT NO.	OFFENSE LOCATION BROCKTON	ARREST DATE 9/17/05	MV CITATION NO.
CURRENT DEFENSE ATTORNEY MARK S. MACHADO			ATTORNEY TYPE APPOINTED - INDIGENT		
CURRENT PROSECUTOR			COMPLAINANT BUSHFAN, SGT. HENRY G.		

OFFENSE AND JUDGMENT INFORMATION

COUNT: 1 OFFENSE DATE: SEPTEMBER 17, 2005
 94C/32C/C DRUG, POSSESS TO DISTRIB CLASS D

JUDGMENT DATE: 1/17/06 JUDGMENT JUDGE: HON. DAVID G. NAGLE JR.
 JUDGMENT METHOD: GUILTY PLEA JUDGMENT: GUILTY
 PROBATION START DATE: 1/17/06 PROBATION END DATE: 1/17/07

SPECIAL CONDITIONS:

SU SUPERVISED PROBATION ORDERED
 PM PAY MONIES ON ATTACHED "NOTICE TO DEFENDANT" TIMELY
 SP PAY ANY CHILD SUPPORT ORDER, AS DEFINED IN GL 119A §1A.
 VR ALLOW PROBATION TO VISIT RESIDENCE WHEN HE/SHE REQUIRES
 AM COMPLETE ANGER MANAGEMENT PROGRAM:
 UR URINALYSIS AS REQUIRED BY PROBATION OFFICER
 ND NOT CONSUME OR POSSESS ANY ILLICIT DRUGS
 MUST NOT ABUSE VICTIM
 URINALYSIS AND ANY OTHER TESTING DEEMED NECESSARY

JAIL START DATE: 1/17/06 INSTITUTION: PLYMOUTH HOUSE OF CORRECTION
 TERM OF SENTENCE: 90 DAYS
 AMOUNT TO BE SERVED:
 JAIL CREDIT DAYS: CONSECUTIVE TO: CONCURRENT WITH:

BAIL/BOND INFORMATION

BAIL TYPE BOND AMT SET CASH AMT SET DATE SET JUDGE
 PERSONAL RECOG 9/19/05 HON. JULIE J. BERNARD

DOCKET ENTRIES

DATE CODE DOCKET ENTRY JUDGE/MAG ACTION DATE

PAGE DATE RECORD PRINTED

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3/28/06

A TRUE
 COPY
 ATTEST

CLERK/MAGISTRATE

Ken P. Luder

1/17/06	COLL	GUILITY PLEA/ASF COLLOQUY GIVEN	DGN	1/17/06
1/17/06	P	PROBATION UNTIL		1/17/07
1/17/06	JE	JUDGMENT ENTERED	DGN	
1/17/06	ARMV	ABSTRACT SENT TO REGISTRY OF MOTOR VEHICLES	DGN	1/17/06
1/17/06	PCFI	PROBATION CONDITIONS FORM ISSUED		

A True Copy Attest:
K. P. Ruden
Clerk of Court

PAGE DATE DOCKET PRINTED

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3/28/06

A TRUE
COPY
ATTEST

CLERK/MAGISTRATE

K. P. Ruden

§ 12-28 BROCKTON CODE

to help defray the costs of administering the rules and regulations as established by the chief of police.

The above list shall be in the possession of the desk officers at the city police station. When reports are received of a motor vehicle disabled on any street in the city, the desk officer shall call in rotation the licensed persons on the list described above.

To appear on the list described above, the persons shall agree in writing to indemnify and hold harmless the city from any claims or causes of action for any injuries or damages of any kind or nature caused by the towing of motor vehicles pursuant to this section.

(Ord. No. D302, 7-22-81)

Secs. 12-29-12-40. Reserved.

ARTICLE III. GENERAL RULES OF OPERATION

Sec. 12-41. Obedience to traffic signs, etc.

No driver of any vehicle shall disobey the instructions of any official traffic-control signal, sign, marking, marker or legend, unless otherwise directed by a police officer.
(Code 1985, § 13-28)

Sec. 12-42. Driving on roadways laned for traffic.

When any roadway has been divided into lanes, a driver of a vehicle shall drive so as to be entirely within a single lane and shall not move from the lane in which he is driving until he has first ascertained if such movement can be made with safety.
(Code 1985, § 13-29)

State law reference—Similar provisions, G.L. c. 89, § 4A.

Sec. 12-43. Driving on right side of roadway.

(a) Upon all roadways, the driver of a vehicle shall drive in the lane nearest the right side of the roadway when such lane is available for travel except when overtaking another vehicle or when preparing for a left turn.

(b) Upon such roadways as are divided by a parkway, grass plot, reservation, viaduct, subway or by any structure or area,

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MOTOR VEHICLES AND TRAFFIC § 12-46

drivers shall keep to the right of such division except when otherwise directed by an officer, signs, signals or markings.
(Code 1985, § 13-30)

State law reference—Driving on right, G.L. c. 89, §§ 4, 4B.

Sec. 12-44. Overtaking and passing.

The driver of a vehicle shall not overtake and pass a vehicle proceeding in the same direction unless there is sufficient clear space ahead on the right side of the roadway to permit the overtaking to be completed without impeding the safe operation of any vehicle ahead.

(Code 1985, § 13-31)

State law reference—Passing vehicle traveling in same direction, G.L. c. 89, § 2.

Sec. 12-45. Driver to give way to overtaking vehicle.

The driver of a vehicle when about to be overtaken and passed by another vehicle approaching from the rear shall give way to the right in favor of the overtaking vehicle, on suitable and audible signal being given by the driver of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(Code 1985, § 13-32)

State law reference—Giving way to overtaking vehicle, G.L. c. 89, § 2.

Sec. 12-46. Obstructing traffic unnecessarily.

No person shall drive in such a manner as to obstruct unnecessarily the normal movement of traffic upon any street or highway. Officers are authorized to require any driver who fails to

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comply with this section to drive to the side of the roadway and wait until such traffic as has been delayed has passed.
(Code 1965, § 13-39)

Sec. 12-47. Obstruction of intersection or crosswalk.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk and on the right half of the roadway to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians notwithstanding any traffic-control signal indication to proceed.
(Code 1965, § 13-34)

Sec. 12-48. Following too closely.

The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the street or highway.
(Code 1965, § 13-35)

Sec. 12-49. Distance between slow-moving vehicles.

Upon roadways less than twenty-seven (27) feet wide and upon which vehicular traffic is permitted to operate in both directions, the driver of any slow-moving vehicle, when traveling outside of a business or residential district, shall not follow another slow-moving vehicle within two hundred (200) feet, but this shall not be construed to prevent such slow-moving vehicle from overtaking and passing another slow-moving vehicle. This section shall not apply to funerals or other lawful processions.
(Code 1965, § 13-36)

Sec. 12-50. Care in starting, stopping, turning or backing.

The driver of any vehicle before starting, stopping, turning from a direct line or backing shall first see that such movement can be made in safety. If the operation of another vehicle should be affected by a stopping or turning movement, the driver of such vehicle shall be given a plainly visible signal, as required by law.
(Code 1965, § 13-37)

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§ 12-61

Sec. 12-51. Sounding warning devices.

The driver of a vehicle shall give audible warning with his horn or other suitable warning device whenever necessary to insure safe operation.
(Code 1965, § 13-43)

Sec. 12-52. Driving through safety zone.

It shall be unlawful for the driver of a vehicle, except on signal from a police officer, to drive the same over or through a safety zone.
(Code 1965, § 13-44)

Sec. 12-53. Driving on road surfaces under construction or repair.

No operator shall enter upon the road surface of any street or highway or section thereof, when, by reasons of construction, surface treatment, maintenance or the like, or because of some unprotected hazard, such road surface is closed to travel, and one or more signs, lights or signals have been erected to indicate that all or part of the road surface of the street or highway is not to be used, or when so advised by an officer, watchman, member of a street or highway crew or employee of the city, either audibly or by signals.
(Code 1965, § 13-46)

Sec. 12-54. Driving on sidewalks.

The driver of a vehicle shall not drive, wheel or draw upon any sidewalk except at a permanent or temporary driveway. This section shall not apply to a child's carriage pushed or drawn by hand.
(Code 1965, §§ 13-47, 23-19)

Secs. 12-55--12-70. Reserved.**ARTICLE IV. STOPPING, STANDING AND
PARKING GENERALLY****Sec. 12-71. General prohibitions.**

No person shall stand or park and no person shall allow, per-

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MOTOR VEHICLES AND TRAFFIC

§ 12-72

mit or suffer any vehicle registered in his name to stand or park in any of the following places:

- (a) Within an intersection.
- (b) Upon any sidewalk.
- (c) Upon any crosswalk.
- (d) Upon the roadway in a rural or sparsely settled district.
- (e) Upon a roadway where parking is permitted unless both wheels on the right side of the vehicle are within twelve (12) inches of the curb or edge of the roadway, except upon those streets which are designated as one-way streets. On such one-way streets vehicles shall be parked in the direction in which the vehicle is moving and with both wheels within twelve (12) inches of the curb. This shall not apply to streets or parts of streets where angle parking is required by this chapter.
- (f) Upon any roadway where the parking of a vehicle will not leave a clear and unobstructed lane at least ten (10) feet wide for passing traffic.
- (g) Upon any street or highway within ten (10) feet of a fire hydrant.
- (h) Upon or in front of any private road, driveway or walk.
- (i) Upon any street or highway within twenty (20) feet of an intersecting way, except alleys.

(Code 1985, § 13-48)

Sec. 12-72. Temporary parking prohibitions.

The chief of police is authorized to prohibit, temporarily, parking on any street or highway or part thereof in an impending or existing emergency, or for a lawful assemblage, demonstration or procession; provided, there is reasonable justification for such prohibition. Vehicles parked in places where parking is prohibited temporarily may be moved by or under the direction of any officer.

(Code 1985, § 13-15)

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§ 12-73. BROCKTON CODE**Sec. 12-73. Parking vehicles for sale prohibited.**

It shall be unlawful for any person to park upon a street or highway any vehicle displayed for sale.
(Code 1965, § 13-59)

Sec. 12-74. Reserved.**Sec. 12-75. Parking vehicles in fire lanes.**

(a) It shall be unlawful to obstruct or block a private way with a vehicle or other means within areas designated and posted as fire lanes, or to leave a vehicle unattended within areas so designated and posted.

(b) The traffic commission is authorized to enact rules and regulations governing the designation and posting of fire lanes within or upon private ways and for the removal of vehicles or other objects left unattended, obstructing or blocking fire lanes so designated and posted.

(c) The penalty for violations of this section or of the rules and regulations of the traffic commission adopted pursuant to this section, shall be one hundred dollars (\$100.00) for each such offense. Each day or portion of a day that any violation is allowed to continue shall constitute a separate offense. (Code 1965, § 6-8; Ord. No. D2289, 1-15-87; Ord. No. D849, 8-30-84)

Sec. 12-76. Parking for the handicapped.

(a) *Licenses plates required.* It is unlawful for any person to park or leave standing any vehicle in a stall or space designated for physically handicapped persons, if said stall or space is posted or marked in a prescribed way, unless said vehicle displays distinguishing license plates issued for handicapped persons, including disabled veterans.

(b) *Property owner to provide spaces; number.* Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings, or for any other place where the public has the right of access as

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§ 12-101

ARTICLE V. PARKING METERS*

Sec. 12-101. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Parking meter. Any mechanical device, not inconsistent with the provisions of this article, and placed or erected on any public way within the city for the regulation of parking. Each parking meter installed shall indicate by proper legend the legal parking time established by this article and when operated shall at all times indicate the balance of legal parking time permitted and at the expiration of such period shall indicate illegal or overtime parking.

Parking meter space. Any space within a parking meter zone, adjacent to a parking meter, which is duly designated for the parking of a single vehicle by lines painted on the surface of the street adjacent to adjoining each parking meter.

Parking meter zone. Any street or portion thereof upon which parking meters are installed and in operation and upon which

*State law reference—Parking meters generally, G.L. c. 40, §§ 22A-22C.

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§ 12-100

invitees or licensees, shall reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by Section 2 of Chapter 90 of the Massachusetts General Laws.

Total Number of Parking Spaces in Area	Number of Handicapped Spaces Required
More than 15, less than 25	1
More than 25, less than 40	5%, not less than 2
More than 40, less than 100	4%, not less than 3
More than 100, less than 200	3%, not less than 4
More than 200, less than 500	2%, not less than 6
More than 500, less than 1,000	1½%, not less than 10
More than 1,000, less than 2,000	1%, not less than 15
More than 2,000, less than 5,000	¾%, not less than 20
More than 5,000	½ of 1%, not less than 30

(c) *Marking of spaces.* Parking spaces designated as reserved shall be identified by the use of the international symbol of handicapped parking and shall be identified by the use of above-grade permanent signs with white lettering against a blue background at a height of not less than five (5) feet, nor more than eight (8) feet to the top of the sign. The sign, minimum of twelve (12) inches by sixteen (16) inches, shall contain the international symbol of accessibility, i.e. a stick figure in a wheelchair, and may also include wording identifying this use.

(d) *Penalties.* The penalty for violations of this section shall be one hundred dollars (\$100.00). Also, the vehicle so parked in violation hereof may be removed according to the provisions of Section 120D of Chapter 266 of the Massachusetts General Laws. (Ord. No. D152, 4-28-88; Ord. No. D164, 9-28-83; Ord. No. D248, 2-22-88; Ord. No. D249, 4-1-88; Ord. No. D352, 11-18-94)

Editor's note—Ordinance No. D152, enacted April 28, 1983, did not specifically amend this Code; hence, codification of the substantive provisions of said ordinance, as amended by Ord. No. D164, as § 12-76, is at the discretion of the editor.

Secs. 12-77—12-100. Reserved.

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